

ASSEMBLY BILL

No. 1949

Introduced by Assembly Member Jerome Horton

February 2, 2006

An act to amend Section 11172 of the Penal Code, relating to child abuse.

LEGISLATIVE COUNSEL'S DIGEST

AB 1949, as introduced, Jerome Horton. Child abuse: reporting.

(1) Existing law identifies those persons who are mandated reporters for purposes of reporting child abuse. Existing law requires the reports filed by mandated reporters concerning abuse and neglect to include certain specified information about the victim and the information that gave rise to the suspicion of abuse and its source. Under existing law, a mandated reporter shall not be civilly or criminally liable for a report authorized by these provisions.

This bill would prohibit immunity from civil or criminal liability for an official or employee of a government agency who is a mandated reporter and, within the scope of his or her official duties, that official or employee, intentionally or with a reckless disregard for the truth, misrepresents child abuse or neglect, as specified.

(2) This bill would make other technical, nonsubstantive changes to these provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 11172 of the Penal Code is amended to
2 read:

1 11172. (a) No mandated reporter shall be civilly or
2 criminally liable for ~~any~~ a report required or authorized by this
3 article, and this immunity shall apply even if the mandated
4 reporter acquired the knowledge or reasonable suspicion of child
5 abuse or neglect outside of his or her professional capacity or
6 outside the scope of his or her employment. ~~Any other~~ A person
7 reporting a known or suspected instance of child abuse or neglect
8 shall not incur civil or criminal liability as a result of ~~any~~ a report
9 authorized by this article unless it can be proven that a false
10 report was made and the person knew that the report was false or
11 was made with reckless disregard of the truth or falsity of the
12 report, and ~~any~~ a person who makes a report of child abuse or
13 neglect known to be false or with reckless disregard of the truth
14 or falsity of the report is liable for ~~any~~ damages caused. No
15 person required to make a report pursuant to this article, nor ~~any~~
16 a person taking photographs at his or her direction, shall incur
17 ~~any~~ civil or criminal liability for taking photographs of a
18 suspected victim of child abuse or neglect, or causing
19 photographs to be taken of a suspected victim of child abuse or
20 neglect, without parental consent, or for disseminating the
21 photographs with the reports required by this article. However,
22 this section shall not be construed to grant immunity from this
23 liability with respect to ~~any other use~~ *uses* of the photographs.

24 (b) *Subdivision (a) shall not apply to a mandated reporter who*
25 *is an official or employee of the state, a city, county, city and*
26 *county, district, or other political subdivision of the state, if all of*
27 *the following apply:*

28 (1) *That official or employee is required to report an incident*
29 *or reasonable suspicion of child abuse or neglect in his or her*
30 *professional capacity or in the scope of his or her employment.*

31 (2) *That official or employee intentionally or with reckless*
32 *disregard of the truth or falsity of a report misrepresents or*
33 *conceals an incident or reasonable suspicion of child abuse or*
34 *neglect.*

35 (3) *There is clear and convincing evidence that absent the*
36 *conduct described in paragraph (2) a different result or decision*
37 *related to that incident or reasonable suspicion of child abuse*
38 *would have been reached.*

39 (c) ~~Any~~ A person, who, pursuant to a request from a
40 government agency investigating a report of suspected child

1 abuse or neglect, provides the requesting agency with access to
2 the victim of a known or suspected instance of child abuse or
3 neglect shall not incur civil or criminal liability as a result of
4 providing that access.

5 ~~(e)–~~

6 (d) The Legislature finds that even though it has provided
7 immunity from liability to persons required or authorized to
8 make reports pursuant to this article, that immunity does not
9 eliminate the possibility that actions may be brought against
10 those persons based upon required or authorized reports. In order
11 to further limit the financial hardship that those persons may
12 incur as a result of fulfilling their legal responsibilities, it is
13 necessary that they not be unfairly burdened by legal fees
14 incurred in defending those actions. Therefore, a mandated
15 reporter may present a claim to the State Board of Control for
16 reasonable attorney's fees and costs incurred in ~~any~~ *an* action
17 against that person on the basis of making a report required or
18 authorized by this article if the court has dismissed the action
19 upon a demurrer or motion for summary judgment made by that
20 person, or if he or she prevails in the action. The State Board of
21 Control shall allow that claim if the requirements of this
22 subdivision are met, and the claim shall be paid from an
23 appropriation to be made for that purpose. Attorney's fees
24 awarded pursuant to this section shall not exceed an hourly rate
25 greater than the rate charged by the Attorney General of the State
26 of California at the time the award is made and shall not exceed
27 an aggregate amount of fifty thousand dollars (\$50,000).

28 ~~(e) This subdivision~~ *Subdivision (d)* shall not apply if a public
29 entity has provided for the defense of the action pursuant to
30 Section 995 of the Government Code.

31 ~~(d)–~~

32 (f) A court may award attorney's fees and costs to a
33 commercial film and photographic print processor ~~when~~ *if* a suit
34 is brought against the processor because of a disclosure mandated
35 by this article and the court finds this suit to be frivolous.